

In The Matter Of:
United States vs.
PFC Bradley E. Manning

Vol. 30
August 7, 2013
UNOFFICIAL DRAFT - 8/7/13 Morning Session

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VOLUME XXX

IN THE UNITED STATES ARMY

UNITED STATES

VS.

MANNING, Bradley E., Pfc. COURT-MARTIAL

U.S. Army, xxx-xx-9504

Headquarters and Headquarters Company,

U.S. Army Garrison,

Joint Base Myer-Henderson Hall,

Fort Myer, VA 22211

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The Hearing in the above-titled matter was continued on Wednesday, August 7, 2013, at 10:00 a.m., at Fort Meade, Maryland, before the Honorable Colonel Denise Lind, Judge.

DISCLAIMER

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1 **APPEARANCES:**

2
3 **ON BEHALF OF GOVERNMENT:**

4 MAJOR ASHDEN FEIN

5 CAPTAIN JOSEPH MORROW

6 CAPTAIN ANGEL OVERGAARD

7 CAPTAIN HUNTER WHYTE

8 CAPTAIN ALEXANDER von ELTEN

9
10 **ON BEHALF OF ACCUSED:**

11 DAVID COOMBS

12 CAPTAIN JOSHUA TOOMAN

13 MAJOR THOMAS HURLEY

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August 7, 2013

WITNESS: MR. JAMES McCARL

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PROCEEDINGS

THE COURT: Court's called to order.
Major Fein, account for the parties.

MR. FEIN: Yes. All parties present when
court last recessed are present except Captain Morrow
is absent, Captain Overgaard is present.

As of 9:55 this morning, seven members of
the media are at the media operation center, one
stenographer, no media in the courtroom, 11 spectators
in the courtroom, the overflow trailer is not being
used but it's available.

Additionally, Your Honor, yesterday what's
been marked as Appellate Exhibit 642 is titled the
Government Response To Defense Objections Under R.C.M.
1001(b)(4) for Major General Nagata and Colonel
Chessnut dated yesterday and it's classified.
Incorporated within that, based off of the agreement of
the parties, is also off the Defense's handwritten
filing, the Government wrote that out and that's
included in Appellate Exhibit 642.

Also, the next recess the Government will

1 be having marked the redacted unclassified version of
2 Appellate Exhibit 642.

3 THE COURT: So just to make sure for the
4 record that we're clear, both sides have agreed that
5 for classified objections the Defense will hand write
6 them out, give them to the Government in one basically
7 joint filing that includes the Defense objections as
8 well as the Government's response?

9 MR. COOMBS: Yes, ma'am.

10 MR. FEIN: Also, ma'am, I apologize, this
11 is an open session and it's unclassified and I have the
12 Court security officer's open hearing checklist and it
13 will be filed.

14 THE COURT: All right. Thank you.

15 As I said yesterday, the Court is prepared
16 to rule on the Defense Motion for Appropriate Relief
17 under R.C.M. 1001(b)(4) for Under Secretary Kennedy.

18 I gave that ruling to the parties yesterday
19 so they would be prepared for today. The ruling is as
20 follows: On 5 August 2013 in accordance with the
21 procedures established in the Court's ruling, Defense

1 Motion for Appropriate Relief under R.C.M. 1001(b)(4)
2 Appellate Exhibit 639, the Defense filed the following
3 six objections to the testimony of Under Secretary
4 Patrick Kennedy, Appellate Exhibit 636.

5 Also, on 5 August 2013, the Government
6 filed a response in opposition, Appellate Exhibit 637.
7 For each Defense objection, the Government position is
8 below the objection followed by the Court's ruling on
9 that objection.

10 One, the testimony relating to the
11 diminution of reporting through diplomats in the field
12 and through those who would speak to Department of
13 State diplomats in various countries. Under Secretary
14 Kennedy indicated that he believed the diminution of
15 reporting was due to a chilling effect charged by the
16 charged leaks in the case. The Defense objects to this
17 testimony as not being directly relating to or
18 resulting from PFC Manning's misconduct under R.C.M.
19 1001(b)(4).

20 Government's position: Under Secretary
21 Kennedy's opinion on diminution of reporting was based

1 on facts or data perceived by or made known to
2 Secretary Kennedy before the hearing. His conclusion
3 was that PFC Manning's misconduct caused a diminution
4 of reporting, which was the natural and probable
5 consequence of PFC Manning's actions, and not based on
6 any intervening event that played the only important
7 part in bringing about the effect.

8 Ruling: A, Under Secretary Kennedy's
9 testimony that there was a diminution in reporting due
10 to chilling effect caused by WikiLeaks' releases of
11 purported Department of State cables given to WikiLeaks
12 by PFC Manning is admissible aggravation with the
13 caveat to the extent that Under Secretary Kennedy's
14 testimony is limited to periods directly following the
15 WikiLeaks releases or directly following subsequent
16 media accounts of the WikiLeaks releases in the various
17 countries. It is directly relating to and resulting
18 from PFC Manning's offenses.

19 B, the foundation for Under Secretary
20 Kennedy's opinion that PFC Manning's misconduct
21 resulted in the WikiLeaks disclosures of the purported

1 Department of State cables caused a long-term
2 diminution in reporting that continues to date is not
3 based on quantifiable data, it is speculative and
4 inadmissible under MRE403. The Court will not
5 considered it.

6 Two, the testimony related to the belief
7 that if we, the United States, do not have the trust of
8 others we cannot get accurate information and that if
9 we, the United States, do not get accurate information
10 we cannot compile a complete product. The Defense
11 objects to this testimony as not directly related to or
12 resulting from PFC Manning's misconduct under R.C.M.
13 1001(b)(4).

14 The Government's position: Under Secretary
15 Kennedy provided this information as context for the
16 foundation of his ultimate opinion and this was based
17 on his personal experience and knowledge.

18 Ruling: This is explanatory testimony that
19 falls within the scope of Under Secretary Kennedy's
20 expertise in the use of diplomatic reporting. It is
21 admissible under R.C.M. 1001(b)(4) for that purpose.

1 Three, the testimony related to the belief
2 that nongovernmental persons were no longer willing to
3 talk fully and frankly with the United States diplomats
4 due to the charged leaks in this case. The Defense
5 objects to this testimony as not being directly related
6 to or resulting from PFC Manning's misconduct under
7 R.C.M. 1001(b)(4).

8 Government position: Under Secretary
9 Kennedy's opinion on the lack of openness of
10 nongovernmental persons was based on facts or data
11 perceived by or made known to Under Secretary Kennedy
12 before the hearing. This conclusion that PFC Manning's
13 misconduct resulted in the unwillingness of
14 nongovernmental personnel to talk fully and frankly
15 with the United States and was a natural and probable
16 consequence of PFC Manning's actions and not based on
17 any intervening event that played the only important
18 part in bringing about that effect.

19 Ruling: This opinion testimony is similar
20 to the testimony in one above and is admissible
21 aggravation under R.C.M. 1001(b)(b4) for the limited

1 duration and time following the WikiLeaks releases or
2 subsequent media (inaudible) as set forth in the
3 Court's ruling in one above.

4 Four, the testimony related to the belief
5 that some embassies included less information in their
6 reporting than they did before out of the fear that the
7 information would not be protected. Under Secretary
8 Kennedy testified that the act of reporting less
9 information was a self-generated limitation on
10 information from various embassies and not the result
11 of the direction by the Department of State. The
12 Defense objects to this testimony as not directly
13 related to or resulting from PFC Manning's misconduct
14 under R.C.M. 1001(b)(4).

15 Government position: Under Secretary
16 Kennedy's opinion that embassies included less
17 information in their reporting was based on facts or
18 data perceived by or made known to Under Secretary
19 Kennedy before the hearing. His conclusion was that
20 PFC Manning's misconduct resulted embassies including
21 less information was the natural and probable

1 consequence of PFC Manning's actions, and not based on
2 any intervening event that played the only important
3 role in bringing about that effect.

4 Ruling: The testimony that PFC Manning's
5 offenses caused some embassies to include less
6 information in their reporting for fear that
7 information will not be protected is admissible under
8 R.C.M. 1001(b)(4) but is limited in time to the periods
9 directly following the WikiLeaks releases or directly
10 following subsequent media accounts of the WikiLeaks
11 releases in the various countries as set forth in the
12 Court's ruling in one above. PFC Manning's offenses
13 directly resulted in the decisions by certain embassies
14 to report less information in their cables.

15 Five, the testimony related to the belief
16 that the disclosures had a chilling effect on
17 diplomatic reporting and that the disclosures have had
18 and will continue to have impact on reporting for some
19 indefinite period. The Defense objects to this
20 testimony as not being directly related to or resulting
21 from PFC Manning's misconduct under R.C.M. 1001(b)(4)

1 and also as being speculative.

2 Government position: Under Secretary
3 Kennedy's opinion on the chilling effect of diplomatic
4 reporting and his opinion on the future impact on
5 reporting were based on facts or data perceived by or
6 made known to Under Secretary Kennedy before the
7 hearing. His conclusion was that PFC Manning's
8 misconduct resulted in this chilling effect and the
9 future impact, and these results were the natural and
10 probable consequences of PFC Manning's actions, and not
11 based on any intervening events that played the only
12 important role in bringing about those effects.

13 Ruling: A, Under Secretary Kennedy's
14 opinion on the chilling effects on diplomatic reporting
15 occurring during periods directly following the
16 WikiLeaks releases or directly following subsequent
17 media accounts is admissible under RCM 1001(b)(4) as
18 directly related to or resulting from PFC Manning's
19 offenses.

20 B, the foundation for Under Secretary
21 Kennedy's opinion that PFC Manning's misconduct

1 resulted in WikiLeaks' disclosures of purported
2 Department of State cables caused a long-term chilling
3 effect on diplomatic reporting that continues to date
4 and will continue into the future is not based on any
5 quantifiable data. It is speculative and inadmissible
6 under MRE403. The Court will not consider it.

7 Six, the testimony that due to the
8 perceived chilling effect on diplomatic reporting, the
9 decrease in information has had a negative affect on
10 policymakers in Washington, D.C. and our interagency
11 partners. Specifically, Under Secretary Kennedy
12 testified that policy decisions are being made based on
13 incomplete information, because other countries chose
14 not to engage or chose not to engage in full and frank
15 reporting, which reporting is relied upon by
16 policymakers. The Defense objects to this testimony as
17 not directly related to or resulting from PFC Manning's
18 misconduct under R.C.M. 1001(b)(4) and also as being
19 speculative.

20 The Defense also objects based on
21 foundation since Under Secretary Kennedy did not

1 explain how he is familiar with policy making, various
2 variables that go into policy making and how diplomatic
3 reporting fits into policy making.

4 Also, "policy making" is an extremely broad
5 category. Under Secretary Kennedy did not explain what
6 type of policy making he was referring to and certainly
7 he is not an expert on policy making in general.

8 Government position: The Government
9 qualified Under Secretary Kennedy as an expert in the
10 fields of "management and operations of the Department
11 of State," and "the use of diplomating reporting by
12 United States policymakers." The Defense did not
13 contest this expertise.

14 Under Secretary Kennedy's opinion on the
15 impact to policy makers in Washington DC and
16 interagency partners was based on facts or data
17 perceived by or made known to Under Secretary Kennedy
18 before the hearing, and not speculative in nature.

19 His conclusion was that PFC Manning's
20 misconduct had a chilling effect that negatively
21 affected policy maker, which was the natural and

1 probable consequence of PFC Manning's actions, and not
2 based on any intervening event that played the only
3 important part in bringing about that effect.

4 Rule, A, Under Secretary Kennedy's
5 testimony about policy making in general, the variables
6 that go into policy making and how diplomatic reporting
7 fits into policy making is within his expertise on the
8 use of diplomatic reporting by United States policy
9 makers and his 40 plus years of working at the highest
10 levels of interagency decision making organizations is
11 relevant. And is admissible to lay the foundation for
12 his opinions in 1, 3, 4 and 5 above.

13 B, the foundation for Under Secretary
14 Kennedy's opinion that the accused offenses had a
15 negative affect on policy making in Washington DC and
16 our interagency partners and that policy decisions are
17 being made based upon incomplete information because
18 other countries chose not to engage in full and frank
19 reporting, which reporting is relied upon by policy
20 makers, is not based on any quantifiable data, it is
21 speculative and inadmissible under MRE403 analysis.

1 Under Secretary Kennedy was properly accepted as an
2 expert in management and operations of the Department
3 of State and in the use of diplomating reporting. The
4 probative value of those portions of his testimony
5 ruled admissible as aggravation evidence under R.C.M.
6 1001(b)(4) is not substantially out-weighted by the
7 danger of unfair prejudices. (inaudible). The Court
8 has limited the scope of the opinions to directly
9 following WikiLeaks releases or directly following
10 subsequent media accounts of WikiLeaks releases. So
11 ordered the 6th day of August, 2013.

12 I believe that ruling is already an
13 Appellate Exhibit; is that correct?

14 Anything else we need to address before we
15 call the witness?

16 MR. COOMBS: No, Your Honor.

17 MR. FEIN: No, ma'am.

18 But may the parties have a moment?

19 THE COURT: Yes.

20 MR. FEIN: No, ma'am. No further issues.

21 THE COURT: Please call the witness.

1 MS. OVERGAARD: United States calls
2 Mr. James McCarl.

3 Raise your right hand.
4 Whereupon,

5 JAMES MCCARL,
6 called as a witness, having been first duly sworn to
7 tell the truth, the whole truth, and nothing but the
8 truth, was examined and testified as follows:

9 DIRECT EXAMINATION BY MS. OVERGAARD:

10 Q And you are Mr. James McCarl?

11 A Yes.

12 Q What is your current position?

13 A I'm the chief of the Mission Integration
14 Division for the Joint IED Defeat Organization,
15 Counter-IED Operations Intelligence Integration Center.

16 Q Okay. You are the division chief or the
17 Chief of the Mission Integration Division?

18 A That's correct.

19 Q Okay. And then what does -- and then you
20 said the counter-IED operations integration center?

21 A Yes.

1 THE COURT: Say that one more time.

2 A Okay.

3 Q It was fast for us.

4 A I am the division chief for the Mission
5 Integration Division, that division is a part of the
6 counter-IED operations and integration center which is
7 a subordinate portion of the Joint IED Defeat
8 Organization.

9 Q How long have you been in that position?

10 A Almost six years.

11 Q What is the mission of the Joint IED Defeat
12 Organization or JIEDO?

13 A It was originally established to deal with
14 the IED threat that emerged in Iraq and subsequently
15 also in Afghanistan. It has three essential lines of
16 operation.

17 Those are, first, to defeat the device. By
18 that I mean it is technically applied against -- either
19 to defend against an IED or to detect it.

20 The second one is to train the force how to
21 use that equipment and how to work tactically against

1 IED's.

2 And the third one in the area where I
3 operating in, is in attacking the network, which is to
4 do the intelligence analysis about how IEDs are
5 employed, who's doing that, and then provide to
6 tactical units a method by which they can strike back
7 at the threat.

8 Q Then you said that another subset which you
9 work is the JIEDO Counter-IED Operations Integration
10 Center?

11 A Operations Intelligence and Integration
12 Center.

13 Q Can you explain to us what that means?

14 A It is, I can.

15 The COICC is what is known as and
16 essentially handles all of that third line of operation
17 which is the attack the network portion.

18 So in my capacity I supervise at the moment
19 slightly over 700, about 900 intelligence and
20 operations analysts, about 200 of which were forward in
21 Afghanistan and Iraq all the way down to battalion

1 level. And our purpose is to provide analytic support
2 to them in allowing them to attack the threat networks
3 that put out IEDs.

4 Q And you said you've been the chief for the
5 Mission Integration Division for six years?

6 A Yes. Almost, it will be six years in
7 October.

8 Q And you're here today to testify as an
9 expert in adversary use of improvised explosive devices
10 or IEDs?

11 A Yes.

12 Q And specifically you will provide
13 specialized knowledge on what purported information was
14 released by the WikiLeaks in CIDNE databases and your
15 opinion on, one, how the adversary can use the
16 information that was released and, two, the changes in
17 enemy IED, TTPs following the releases of the purported
18 U.S. Government information?

19 A Yes.

20 Q And if any questions that you're asked
21 today, sir, require you to disclose classified

1 information or you believe will require you to disclose
2 classified information, please just let us know and
3 we'll ask those questions in a closed session.

4 Sir, what effects do IEDs have on military
5 efforts?

6 A Well, it's a matter of record that IEDs
7 are the number one casualty producer in both Iraq and
8 Afghanistan. It's apex probably accounted for
9 80 percent of all the casualties that were the result
10 of an IED event. So it sort of goes between 60 and
11 80 percent right now. But it's the significant weapon
12 of choice by the threat.

13 Q And you mentioned the obvious threat in
14 Iraq and Afghanistan, are IEDs used elsewhere against
15 US forces in the world?

16 A So the answer is yes on two planes. There
17 are a number of -- every month between 700 and a
18 thousand IEDs go off around the globe in other places.
19 There are places where US forces are on the ground, for
20 example. There are special operations forces -- and I
21 would not be able in this form to go into those

1 locations -- but there are special operations forces
2 throughout Africa and Latin America who potentially are
3 in contact with those but they're not as prolific
4 against US persons as they are in Afghanistan, but
5 they're certainly prolific against US interest and
6 allies.

7 Q Where does JIEDO, where do they primarily
8 operate?

9 A Originally we were focused strictly on Iraq
10 and Afghanistan to the forces in contact there. Now we
11 have an expanded portfolio that allows us to, and we do
12 operate, in support of every one of the combatant
13 commands around the globe.

14 Q And you said Iraq and Afghanistan were some
15 of the primary places that JIEDO operated.

16 What do JIEDO do, in theater it follows the
17 three lines of operation that you described.

18 A So it deploys equipment, both protective
19 equipment and that could be for an individual or it
20 could be protective equipment like the M wraps which
21 were fielded as vehicles that were resistant to IEDs.

1 That is one application.

2 The second one is to train the force. We
3 have trainers who observe the enemy TTP. Then attempt
4 to synthesize that into methods that you can use to
5 counter that.

6 Then the third is where my particular
7 effort is and that is that I have analysts, operations
8 specialists, and analysts all the way down to battalion
9 level whose job it is to expose the network,
10 analytically examine and expose what the enemy network
11 is. The people who build the IEDs, put them out and
12 make that exposure available to the action arm to
13 attack that network, either kill or capture.

14 Q And the third line of operation that you
15 described, is that primarily done in theater or is that
16 done stateside as well?

17 A Well, there's two parts to it. Obviously
18 the, the first portion is to understand the network.

19 So the bulk of that is done here in the US
20 where my effort is to synthesize and integrate
21 intelligence from around the intelligence community and

1 from wherever else we can acquire it, allies, et
2 cetera, that's the see portion, see the enemy portion
3 of that mission.

4 The attacking the network portion, JIEDO
5 has no authority there. Its position is to empower the
6 combatant commander and on down to his tactical units
7 who do have the authorities. We're basically providing
8 that to them with a forward presence that allows them
9 to attack the network there.

10 Q What types of data do you use to compile
11 this analysis?

12 A It's an ever-expanding and changing set.
13 But we take about 200 different data feeds, many of
14 them are the traditional data feeds that you would get
15 from the intelligence community, the SIGACTS that come
16 out of the combatant command and the tactical units in
17 the field.

18 But we also use nontraditional types of
19 intelligence and information: Business intelligence,
20 threat finance, all of those things, because they help
21 expose portions of the network that you wouldn't see

1 otherwise. So that's a dynamic piece that changes all
2 the time. But roughly about 200, 200 different data
3 feeds.

4 Q Does that include Department of State
5 cables?

6 A It did.

7 Q And basically all the INTs (phonetic)?

8 A Yes.

9 Q Depending on if they're relevant?

10 A Everything that comes out of the
11 intelligence community that is available to, that is
12 available we will use and have access to.

13 Q And who typically tasked JIEDO with
14 preparing analytical products?

15 A There are two sources. One would be sort
16 of the programmatic community who is attempting to
17 either create a new or produce a new piece of
18 equipment. Whether it be an electronic warfare system
19 to defeat a remote controlled IED, or it could be, but
20 more often in my case it is a bottom up piece that
21 comes from the supported unit on the ground in the

1 field. So they would ask us, they could ask us any
2 number of types of analytical questions and we'll
3 provide that support.

4 Q So does it typically come from the
5 combatant commands?

6 A It typically comes in from the units in
7 contact with us. There are no absolutes in this. We
8 get requests from the combatant commands themselves,
9 the four-star level. We have got requests from support
10 outside of DoD, State Department for example.

11 But the bulk, put it in perspective, since
12 we have, we have been in business, we have done 18,000
13 plus requests for support. Each one of those is an
14 analytical effort of some kind, some are large, some
15 are small. But the bulk of that, the vast majority of
16 that comes from the tactical units in the field who are
17 looking for support on a counter-IED problem they're
18 trying to solve.

19 Q When you're responding to these requests
20 for analysis from tactical units, could you give an
21 example of how that would work? How did you receive it

1 and then what you would do with that information?

2 A Right. Well, I'll give you two examples
3 just so -- because they're slightly different.

4 Unit going into the field to take up a
5 position and own the battle space will typically ask us
6 questions, like, where are the IEDs going off? What
7 are the high density areas? Where can we expect to see
8 IEDs? What kinds of IEDs will these be: Pressure
9 plate, command wire, remote controllers, all of the
10 above? Who is the network that's supplying this? Do
11 we know the names of the people in that network? Where
12 do they bed down? Where are their compounds of
13 interest? And so do you have of a pattern of life on
14 them so that we can strike that now?

15 A lot of that is about situational
16 awareness because they're going in there the first
17 time.

18 Longer term battle space owners will
19 typically begin to integrate our products with their
20 planning for their next operation.

21 So we typically plan, we typically support

1 operations on a weekly basis. They will say back to
2 us, we're going to go into this particular area, we
3 need to know what to expect in there. We'll give them
4 a build-out similar to the one I just described, but it
5 will help them shape their ISR --

6 Q What is ISR?

7 A Their intelligence, surveillance and
8 recognizance. Before an operation goes down, typically
9 they have what's, in the vernacular in the theater,
10 called the ISR soak. So it might be a week, could be
11 more, in which they will assemble over the expected
12 area of operation all of the intelligence and
13 surveillance and recognizance assets that they need to
14 begin to understand what is happening on that
15 particular piece of terrain.

16 We will help steer that because we have our
17 own, our own understanding of that terrain and our own
18 analyses that will point that ISR to particular places
19 and then support subsequently the pattern of life on
20 individuals in there that they're going after.

21 Q Sir, before you joined JIEDO what was your

1 career?

2 A I was, served 30 years in the United States
3 Army, retired as a colonel, commanded a battalion and
4 brigade. I had four different combat tours in various
5 places. And most recently stood up and ran the INSCOM
6 intelligence and operations center as well as I ran for
7 two years the Army's Red Team for, directly for the
8 Vice Chief of Staff of the Army at that time, General
9 Cody.

10 And then the last thing before I retired, I
11 served tour in Afghanistan as a Chief of Staff on the
12 mission for SOFT task forces in Afghanistan.

13 Q Did you say your branch, sir?

14 A I was military intelligence.

15 Q Could you tell us a little bit more about
16 the Red Team, the Red Team projects that you worked on?

17 A Right. So the idea, when General
18 Schoomaker was the Chief of Staff of the Army he was a
19 big believer in the Red Team. He institutionally had
20 the idea of a Red Team University that taught people
21 how to do it. The purpose is to emulate the threat.

1 So it allows a commander to ask a slightly different
2 question than a pure intel question.

3 For example, I'm a commander, I'm going to
4 be on this particular piece of terrain or I'm going to
5 be doing this particular activity, if you were the
6 enemy, how would you react under these conditions at
7 this time, what kind of scenarios would we see from
8 that?

9 That allows commanders to think through
10 mitigation strategies and how they might deal with
11 those possible scenarios and so as a red, as the Chief
12 of the Army's Red Team for two years, essentially I
13 spent about once, about once a month I spent a session
14 with the Chief of Staff, Vice Chief and all the
15 principals at the bunker in the Pentagon starring as
16 their adversary.

17 It included both Jihadist, radical
18 philosophy and IED parts to it.

19 Q Did you work with JIEDO at all in that
20 capacity?

21 A I did. As JIEDO began to emerge as an

1 organization it got its start as an Army organization,
2 transitioned to a joint organization. So in its early
3 days we did several projects for JIEDO, Red Team
4 projects.

5 Q Sir, as one of the senior INT officers at
6 JIEDO, who relies on your expertise in the adversary
7 use of IEDs?

8 A Well, all of the, essentially all of those,
9 those requests for support, every one of those things
10 is my responsibility. So by extension at any one time
11 I've got 200 analytic projects that rely on my support
12 and my expertise because I do and am responsible for
13 the quality control of those products going down to the
14 tactical commanders. That can be division commander,
15 corps commander, or even down to platoon leaders. And
16 within the JIEDO headquarters itself I am one of the
17 senior intelligence officers there so, therefore, the
18 JIEDO director also uses me.

19 For example, I was a subject matter expert
20 just last week in the briefing to Congress.

21 MS. OVERGAARD: At this time we offer

1 Mr. McCarl as an expert in adversary use of IEDs.

2 MR. HURLEY: No objection.

3 THE COURT: So accepted.

4 BY MS. OVERGAARD:

5 Q Sir, are you familiar with the WikiLeaks
6 release of purported U.S. Government information?

7 A Yes.

8 Q And when did you first become aware of that
9 alleged release of U.S. Government information?

10 A Well, just like the rest of the general
11 public when it was in the news.

12 Q Was JIEDO given any tasking in the
13 aftermath of the alleged release?

14 A Yes. In September of 2010, CENTCOM, deputy
15 J3 sent a request for support to us and it asked us to
16 take a look at a selected set, they selected them, of
17 leaked reports. There were 3,790. And to provide to
18 them a JIEDO evaluation of what we thought the impact
19 was as a result of those leaks from an IED perspective.

20 Q In the 3,790 reports that you mentioned,
21 where were they from?

1 A Those were all from the SIGACTS from
2 Afghanistan.

3 Q Did they do another tasking on --

4 THE COURT: What was the number?

5 MS. OVERGAARD: 3,000 -- did I switch it?

6 A 3,790.

7 THE COURT: Thank you.

8 Q Did they also ask you to look at any of the
9 CIDNE-I SigActs?

10 A They did. That followed in the next part
11 of the following year in early 2011. They came back to
12 us and said here's, you know, here's 111,000 leaked
13 SigActs from Iraq, we'd like you to do the same thing.

14 Q Why was it necessary to determine what IED
15 related information may have been compromised in the
16 purported devices?

17 A Well, it is the same -- it's the same
18 principles that you would apply to any of this. It's
19 essential to understand what your OPSEC loss is, what
20 your adversary may be able to glean from that in order
21 to anticipate, you know, what their actions are going

1 to be and then subsequently deal with them.

2 Q Sir, what role did you play in this
3 tasking?

4 A Well, as the Mission Integration Division
5 Chief I handled the quality control portion of this.

6 So I assigned out to three different
7 sub-elements of my division the analytic process. I
8 need you, the ORSA guys, to do the statistical analysis
9 on. I need the Red Team guys to take that perspective
10 and see how the enemy might react.

11 Then I asked my open source guys to take a
12 look at what reflections and what you might expect to
13 see from both allies and from the Jihadists themselves.

14 We assigned those three things, I assigned
15 a lead for this to put the product together. Like all
16 of our products, they get two quality control checks
17 before they go out. I was involved really more at that
18 point as the supervisor looking at the quality control.
19 I was not the analyst who did the reading.

20 Q So you were, just -- so you're in charge of
21 these three different analytic teams who were

1 conducting the analysis?

2 A That's correct.

3 Q And you said there was the ORSA was the
4 first one?

5 A That's the Operations Research Systems
6 Analysis. It's a, essentially a capability that in
7 this case we're using to do statistical analysis to and
8 to help us pull from these gigantic mounds of data how
9 we can sort it and understand it so that we're using
10 statistical analytic tools to help us rack and stack
11 the materials and to look for things in there that then
12 key the analyst.

13 Q Then you also said you had the Red Team,
14 which looked at what the enemy would do if they had the
15 information?

16 A Correct. So if you had, if you had a
17 particular vulnerability, the Red Team would give a
18 perspective on if we were the threat and we had this,
19 how might we react.

20 So this provides back to the customer some
21 understanding of what types of scenarios might play out

1 as a result of this.

2 Q And the customer in this case was CENTCOM
3 J3?

4 A Correct.

5 Q Then the third team that you had said was
6 the open source team?

7 A Correct.

8 Q What was their primary focus?

9 A Well, again, what we're looking for there
10 was the sweep through all of the reflections that we
11 could find in open source, particularly the Jihadist
12 web sites but also in open news reflections in allies.
13 For example, how were the Pakistanis, how
14 were the Afghani governments, how were they reacting to
15 this. So it gave us some understanding or perspective
16 on how they, you know, viewed this.

17 Q Going back to the ORSA. You said they
18 sorted and understand and used some analytic
19 statistical processes to make their determinations.
20 Could you walk us through what they did?

21 A Okay. Not being an ORSA I'm going to give

1 you a general description of how this goes. But
2 essentially when you have 111,000 different leaked
3 reports, you have to have a method by which you, you
4 have to have somewhere to start because you simply
5 don't have time to read every single message.

6 So the analysts began, read about 3,000,
7 roughly, correction, about 2,000 reports and from that
8 got an understanding of what the main key ideas and key
9 words would be in what we were looking at that were
10 associated with the task, the analytic task that we
11 were assigned.

12 The ORSA guys then wrote a script, helped
13 write a script that would then allow the computer to
14 rack and stack those different reports into different
15 categories or subject areas where we could then begin
16 to examine those each as a, as an idea as opposed to
17 just randomly sweeping through a bunch of ideas and
18 hoping that you can figure it out later on.

19 Q Then after they were pulled through the,
20 well, through the reading and computer process, did a
21 person read all of that information?

1 A They did. They read the highest end
2 sampling of those. It was a cut off of how much you
3 could read of it. But they take the ones that had the
4 most of the key words that raised the level of hits
5 from that. Then they read them. Then provided the
6 analytic work from that.

7 Q And you said they were separated into
8 basically subject, different subject areas. Was the
9 severity of threat evaluated at all?

10 A Yes. There was three categories of
11 severity that we applied.

12 Q And what were those three areas, without
13 going into any detail?

14 A Well, there's a high, medium and low.

15 Q Sir, how long did the review last of all
16 this 115,000 approximately SigActs?

17 A Well, there are a number of events going on
18 concurrently and some sequentially and some with breaks
19 in them so it's not easy to give you a linear
20 description.

21 I'll give you -- here's our calculation is

1 that we spent 855 man hours which equates to about
2 roughly \$200,000 to pay all those people to do that
3 work.

4 Q Sir, what would these individuals, these
5 analysts, have been doing if they weren't conducting
6 this review?

7 A Well, they would have been supporting
8 tactical units in the field.

9 Q Did this impact the primary mission of
10 JIEDO?

11 A Well, it impacted, it impacted our mission
12 because we had to divert resources away from the
13 tactical units in order to be able to do this. I can't
14 quantify what that is but it's intuitively obvious.

15 Q All right.

16 MS. OVERGAARD: That's the end of our open
17 direct, ma'am.

18 MR. HURLEY: Ma'am, we don't have any open
19 cross-examination.

20 THE COURT: I just have one brief question.

21 EXAMINATION BY THE COURT:

1 Q And if you can't answer this in a open
2 setting, please don't.

3 How long did each of these reviews take?

4 A Rough order of magnitude about three weeks
5 on the first one. The second one was much larger so it
6 took a little longer, maybe four, four weeks just to
7 get it underway.

8 Q You said to get it underway?

9 A I take it back. Just to get it underway to
10 the point that we could then take a look and rack and
11 stack it into a particular product.

12 Q How long until the end product?

13 A About five weeks I'd say.

14 THE COURT: Any follow-up based on that?

15 MS. OVERGAARD: No, ma'am.

16 MR. HURLEY: No, ma'am.

17 THE COURT: All right. So the Government
18 wants to move into a closed session; is that correct?

19 MS. OVERGAARD: Yes, ma'am.

20 MR. FEIN: (Inaudible) previous order
21 Appellate Exhibit 550.

1 THE COURT: Thank you. I'd like the
2 parties to confer so I can advise the public when you
3 can anticipate the next open session will be.

4 And remember, yesterday I believe was about
5 a half an hour early so be generous with your time.

6 MR. FEIN: 15:00, ma'am.

7 THE COURT: Members of the Public, we are
8 now going to proceed into closed session. The closed
9 session is not going to last until 1500 but there are
10 additional preparatory steps that counsel need to take
11 before we call the next witness. So we're going to
12 have the next open session at 1500 or 3:00 this
13 afternoon.

14 How long of a recess do we need?

15 MR. FEIN: 20 minutes.

16 THE COURT: Mr. McCarl, during the recess
17 please don't discuss your testimony with anyone. We'll
18 allow you to go ahead and step down.

19 Anything else we need to address before we
20 recess the court?

21 MR. FEIN: No, ma'am.

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THE COURT: Court is in recess.
(Court in closed session until 3:00 p.m.)

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